

House Bill 1097 (AS PASSED HOUSE AND SENATE)

By: Representatives McCall of the 30th, Smith of the 129th, Scheid of the 22nd, Channell of the 116th, Floyd of the 147th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 21-2-3 of the Official Code of Georgia Annotated, relating to prohibited placements of campaign posters, signs, and advertisements, so as to limit certain regulations of campaign signs on private property; to amend Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, relating to control of signs and signals on or near public roads, so as to prohibit certain outdoor advertising containing depictions of nudity or sexual conduct which are visible to motor vehicle drivers traveling on certain public roads; to define certain terms; to provide punishments for violations; to provide legislative findings and declarations; to change certain provisions relating to restrictions on outdoor advertising signs authorized by Code Sections 32-6-72 and 32-6-73 and multiple message signs on the interstate system, primary highways, and other highways; to repeal certain provisions of law restricting outdoor advertising which were declared unconstitutional by the Georgia Supreme Court in the case of *State v. Cafe Erotica, Inc.*, 270 Ga. 97 (1998); to provide for severability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 21-2-3 of the Official Code of Georgia Annotated, relating to prohibited placements of campaign posters, signs, and advertisements, is amended by striking subsection (a) and inserting a new subsection (a) to read as follows:

"(a) It shall be unlawful for any person to place campaign posters, signs, and or advertisements:

~~(1) Within the right of way of any public streets, roads, or highways;~~

~~(2)~~(1) On any public property or building, unless the owner thereof or the occupier as authorized by such owner has given permission to place such posters, signs, or advertisements on such property; provided, however, that signs within the rights of way of public roads shall be governed by Code Section 32-6-51;

~~(3)~~(2) On any private property unless the owner thereof or the occupier as authorized by such owner has given permission to place such ~~campaign~~ posters, signs, ~~and~~ or advertisements on such property; and, provided, further that no municipal, county, or consolidated government may restrict by regulation or other means the length of time a political campaign sign may be displayed or the number of signs which may be displayed on private property for which permission has been granted; or

~~(4) Reserved;~~

~~(5)~~(3) On any property zoned for commercial or industrial uses if the placement of such ~~campaign~~ posters, signs, ~~and~~ or advertisements conflicts with any zoning laws or ordinances."

SECTION 2.

Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, relating to control of signs and signals on or near public roads, is amended by adding a new Code Section 32-6-52 to read as follows:

"32-6-52.

(a) As used in this Code section, the term:

(1) 'Nudity' means the displaying of any portion of the human female breast below the top of the areola or the displaying of any portion of any human's pubic hair, anus, vulva, or genitals.

(2) 'Outdoor advertising' means any commercial advertisement displayed outdoors by means of billboards or signs.

(3) 'Sexual conduct' means acts of sexual intercourse, masturbation, sodomy, or fondling of a human's clothed or unclothed genitals, pubic area, buttocks, or, if the human is female, breast.

(b) The General Assembly finds and declares that outdoor advertising containing depictions of nudity or sexual conduct which are visible from the roadways of public roads may be startling or provocative and thereby divert the attention of motor vehicle drivers, thus causing real and substantial hazards to traffic safety. The General Assembly further declares that the purpose of this Code section is to protect the public welfare and safety against such hazards.

(c) No person shall display any outdoor advertising containing any depiction of nudity or sexual conduct when such depiction is visible from the roadway of any public road in the state highway system as defined in Code Section 32-4-1.

(d)(1) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000.00.

(2) Each day during which outdoor advertising is displayed in violation of subsection (c) of this Code section shall constitute a separate offense."

SECTION 3.

Said article is further amended by striking in its entirety paragraph (12) of subsection (a) of Code Section 32-6-75, relating to outdoor advertising signs authorized by Code Sections 32-6-72 and 32-6-73 and multiple message signs on the interstate system, primary highways, and other highways, and inserting in lieu thereof the following:

"(12) Contains more than two faces visible from the same direction on the main traveled way; provided, however, that after July 1, 2006, no sign shall be erected that contains more than one face vertically stacked visible from the same direction on the main traveled way. Double-faced, back-to-back, and V-type constructed signs shall, for the purpose of determining compliance with size and spacing limitations, be considered as one sign;"

SECTION 4.

Said article is further amended in said Code section by striking in its entirety paragraph (8) of subsection (a) and inserting in lieu thereof a new paragraph (8) to read as follows:

"(8) If illuminated, contains, includes, or is illuminated by any flashing, intermittent, or moving light or lights except those giving public service information such as time, date, temperature, weather, or other similar information except as expressly permitted under subsection (c) of this Code section. The illumination of mechanical multiple message signs is not illumination by flashing, intermittent, or moving light or lights, except that no multiple message sign may include any illumination which is flashing, intermittent, or moving when the sign is in a fixed position;"

SECTION 5.

Said article is further amended in said Code section by striking subsection (b) and inserting in lieu thereof the following:

~~"(b)(1) As used in this subsection, the term 'nudity' means the displaying of any portion of the female breast below the top of the areola or the displaying of any portion of any person's pubic hair, anus, cleft of the buttocks, vulva, or genitals.~~

~~(2) Since the exhibition of nudity or depictions of nudity in connection with the sale or consumption of alcoholic beverages may be restricted or prohibited in certain political~~

~~subdivisions of this state pursuant to Article III, Section VI, Paragraph VII of the Constitution, since an outdoor advertising device advertising a commercial establishment where nudity is exhibited which is located in a political subdivision different from where the commercial establishment is located may mislead the traveling public and cause a devaluation of the property in the area surrounding such outdoor advertising, and since outdoor advertising of a commercial establishment where nudity is exhibited may divert the attention of drivers and thus cause traffic hazards, it is the intent of the General Assembly to protect the welfare and safety of the residents of this state and the traveling public by regulating outdoor advertising of commercial establishments where nudity is exhibited.~~

~~(3) Any outdoor advertising of a commercial establishment where nudity is exhibited shall be limited to the property where such commercial establishment is located, and the size, type, and number of outdoor advertising devices on any such property may be further regulated by rules and regulations promulgated by the commissioner of transportation.~~

(b) Reserved."

SECTION 6.

Said article is further amended in said Code section by striking in its entirety paragraph (1) of subsection (c) and inserting in lieu the following:

"(1) Multiple message signs shall be permitted on the interstate system, primary highways, and other highways under the following conditions:

(A) Each multiple message sign shall remain fixed for at least ten seconds;

(B) When a message is changed mechanically, it shall be accomplished in three seconds or less;

(C) No such multiple message sign shall be placed within 5,000 feet of another mechanical multiple message sign on the same side of the highway;

(D) Any such sign shall contain a default design that will freeze the sign in one position if a malfunction occurs; ~~and~~

(E) Any maximum size limitations shall apply independently to each side of a multiple message sign; and

(F) Nonmechanical electronic multiple message signs that are otherwise in compliance with this subsection and are illuminated entirely by the use of light emitting diodes, back lighting, or any other light source shall be permitted under the following circumstances:

(i) Each transitional change occurs within two seconds;

(ii) If the department finds an electronic sign or any display or effect thereon to cause glare or to impair the vision of the driver of any motor vehicle or to otherwise interfere with the safe operation of a motor vehicle, then, upon the department's request, the owner of the sign shall promptly and within not more than 48 hours reduce the intensity of the sign to a level acceptable to the department; and

(iii) The owner of any existing or nonconforming electronic sign shall have 180 days from the effective date of this subparagraph to bring the electronic sign in compliance with this subparagraph and to request a permit from the department."

SECTION 7.

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such declaration or adjudication shall affect and invalidate the whole of the section in which such matter appears herein, but shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional, but would not have passed any section of this Act containing or constituting an invalid or unconstitutional provision.

SECTION 8.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 9.

All laws and parts of laws in conflict with this Act are hereby repealed.